



City of Carmel

Carmel Advisory Board of Zoning Appeals Regular Meeting Monday, January 24, 2005

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 7:00 PM on Monday, January 24, 2005, in the Council Chambers of City Hall, Carmel, Indiana. Leo Dierckman opened the meeting with roll call and the Pledge of Allegiance.

Members in attendance were Leo Dierckman, James Hawkins, and Madeleine Torres, thereby establishing a quorum. Angie Conn and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mr. Hollibaugh presented a gift to Charles Weinkauff for his nine years of service on the Board. Board members thanked him for his service and guidance.

Mr. Molitor swore in Kent M. Broach as the new Mayoral appointment to the Board.

Mrs. Torres moved to approve the minutes from the November 22, 2004 and December 13, 2004 meetings. The motion was seconded by Mr. Hawkins and **APPROVED 3-0**, Mr. Broach abstained.

Election of Officers:

Mrs. Torres nominated James Hawkins for President, seconded by Mr. Broach.
James Hawkins was elected President of the Board by unanimous consent.

Mr. Dierckman nominated Earlene Plavchak for Vice President, seconded by Mrs. Torres.
Earlene Plavchak was elected Vice President of the Board by unanimous consent.

Mr. Molitor gave the Legal Report. He reminded the Board of the Executive Session immediately following the regular meeting to discuss pending litigation.

Mr. Hawkins reminded everyone of the procedure. The Petitioner presentation is 15 minutes, general public comments in favor of the petition is 5 minutes, organized remonstrance is 15 minutes, general public unfavorable comments is 5 minutes and Petitioner rebuttal is 5 minutes, followed by Staff comments.

J. Public Hearing

1-5h. TABLED ~~Companion Animal Hospital~~

~~Applicant seeks use variance & development standards variance approvals for veterinary hospital.~~

~~Docket No. 04090009 UV Chapter 19.01 permitted uses~~

~~Docket No. 04090010 V Chapter 27.05 number of parking spaces~~
~~Docket No. 04090023 V Chapter 26.04.05 buffer yard requirements~~
~~Docket No. 04090024 V Chapter 1904.03 side yard setbacks WITHDRAWN~~
~~Docket No. 04090025 V Chapter 19.04.02 front yard setback~~
~~The site is located at 1425 S Range Line Rd and is zoned B-8/Business.~~
~~Filed by Jim Shinaver of Nelson & Frankenberger for Dr. Buzzetti.~~

6-8h. TABLED ~~O'Malia Fireplace Shop Expansion~~

~~The applicant seeks the following development standards variances:~~

~~Docket No. 04100017 V Chapter 12.04.02 front yard setback~~

~~Docket No. 04100018 V Chapter 27.03.02 no curbed parking~~

~~Docket No. 04110009 V Chapter 26.04.05 buffer yard requirements~~

~~The site is located at 220 S Range Line Rd. The site is zoned B-1/Business.~~

~~Filed by Paul Reis of Drewry Simmons Pitts & Vornehm for the Helen J. O'Malia Trust.~~

9-12h. Pryor Riding Arena

Petitioner seeks special use and development standards variance approvals for an indoor riding arena and horse stables.

Docket No. 04120004 SU Chapter 5.02 Special Uses

Docket No. 04120005 V Chapter 25.01.01.A.4 accessory building built before principal

Docket No. 04120006 V Chapter 25.01.01.B.8 maximum gross floor area

Docket No. 04120007 V Chapter 25.01.01.B.1 height greater than 18-ft

The site is located at 12899 West Road and is zoned S-1/Residence-Estate.

Filed by Nathan Althouse of Miller Surveying for Arlet & Claudia Pryor.

Present for the Petitioner: Nathan Althouse, Miller Surveying, 948 Conner Street, Noblesville. He went through the packet which contained the Findings of Fact. Page 9 was an area map with location of the property. The area is large rural lots. Page 10 noted existing horse barns in the area and page 11 showed more horse farms. One is west of the property and the remaining farms are east of the property. The property touches one existing subdivision, Shelborne Estates. The southwest corner of the subdivision is a retention pond area. They touch one lot in the subdivision about sixty feet on the east side of this property. The south part of the property is woods with a creek. Page 13 was the proposed site plan showing the location of the barn. There had been concern from the Staff regarding the location of the barn to the existing house to the west. Staff had recommended obtaining a letter from that neighbor. Since then, the Pryor's have a signed purchase agreement for that house. They will not be building a new house, but adding this house and 3 acres to the existing 15 acres. The parcels to the north are vacant properties with a small house on one parcel. They will be fencing in the property on the north of the existing woods. The County Surveyor's office recommended the open drain on the southwest part of the property. They will be putting a filter strip along that area.

Favorable:

John McDowell, 12833 West Road, just south of the proposed site, was excited to have it. He and his wife were concerned about how many trees would be coming down.

Mr. Althouse stated that a majority of the trees would stay.

Pete Gray, adjacent to the north, wanted to see the design and architecture of the barn.

Mr. Althouse stated it would be 80 by 170 foot barn. There are proposed plantings on the north side. They want a recreation area for seating and picnicking north of the barn. It would be personal use for six horses and possibly boarding of six horses. They would not hold horse events. It would be for people they know and personal use.

Mrs. Conn stated that the Department had requested Commitments to clarify the personal use.

Mr. Althouse stated the 150 by 60 foot parking would be gravel and used for turn-a-rounds.

Mr. Gray asked if it was possible to move the barn further south away from his property line.

Mr. Althouse stated that would be a question for Mrs. Pryor.

Remonstrance: None

Rebuttal: None

Mrs. Conn gave the Staff Report. The Department is concerned with the location of the barn in relation to the property to the north. The Department had requested a set of Commitments from the Petitioner as to what a personal use would be and to exclude horse shows and similar uses. The Department also requested that the Petitioner dedicate the necessary road right-of-way pursuant to the 20-Year Thoroughfare Plan. The Department recommended favorable consideration of the four dockets as long as the Board was comfortable with the barn location and the condition that the Petitioner would dedicate the necessary amount of right-of-way of 40 feet from the center line.

Mr. Dierckman felt there were a couple of open items that the Staff and Petitioner needed to get together. He recommended tabling until the next meeting.

Mr. Althouse stated they had drafted Commitments that he had read to Mrs. Conn, but the Department had not received a copy concerning the personal use, boarding and lessons, and construction of the barn. They would not be building the proposed house.

Mr. Hawkins asked for a definition of personal and commercial use.

Mrs. Conn stated they would need to explore that and would also look at the dedication of right-of-way and the Commitments.

The Board discussed needing to clarify the location of the barn, dedicated right-of-way, and Commitments for personal use. This could be done for the next Hearing Officer meeting.

Mr. Molitor stated that it could be tabled to the Hearing Officer meeting on February 1 contingent upon the approval of the Amendments to the Rules of Procedure at the end of the agenda. Then a Hearing Officer would be allowed to hear a Special Use variance.

Mr. Dierckman moved to table **Docket Nos. 04120004 SU, 04120005 V, 04120006 V, 04120007 V, Pryor Riding Arena**. The motion was seconded by Mrs. Torres and **APPROVED 4-0**.

Mr. Dierckman asked if the Chair had the authority to table or assign the item to the Hearing Officer.

Mr. Molitor replied that the BZA Chair does not have that authority.

13h. TABLED ~~CMC Properties, Sec 2, lot 3~~

~~Petitioner seeks the following development standards variance approval:~~

~~**Docket No. 04120010 V** Chapter 25.07.03.03(d)(2) real estate sign height~~

~~The site is located at the northwest corner of 131st St. and US 31. The site is zoned B-5/Business within the US 31 Overlay.~~

~~Filed by Sherry Marchbanks of Mazda Sign, Inc. for CMC.~~

Item 1d that was Tabled from the 6:30 PM Hearing Officer meeting.

1d. Tabled to the Full BZA at 7 pm, tonight.

Woodland Green, Sec 1, lot 77: Scherb Residence

Petitioner seeks the following development standards variance approval:

Docket No. 04120009 V Chapter 25.01.01.B.3.b.i.(b) accessory building rear/side yard setback

The site is located at 3919 Brian Place and is zoned R-2/Residence.

Filed by David and Diana Scherb.

Present for the Petitioner: David Scherb, 3919 Brian Place. He needs this variance to leave the shed where he placed it last fall. A neighbor had called the City regarding the appearance of the shed. Kevin Brennan, Code Enforcement, had inspected the shed and informed him that he was inside the drainage/utility easement and would need a building permit for that size structure, which is 12 by 12. A site location was shown. He had built the shed so that he could get his cars into the garage. He showed a site plan showing the shed and the utility easement. The shed is built on skids and is a moveable structure. He could take it out of the way if there was need to work in the easement. At the present time, there are no utilities that run through that easement on his side of the fence which is on the property line. If he moves it out from the property line, it would cut into the play area of the yard. Mr. Brennan told him he could finish the shed to make it water tight. It still needs paint. When he was collecting signatures from his neighbors, they did not have any problems.

Members of the public were invited to speak in favor or opposition to the petition: no one appeared.

The Board had received a remonstrance letter with photos from Kellee and Bill Heisel requesting the building be moved outside the easement.

Mr. Scherb stated he had not received a copy. He stated that Mrs. Heisel had been the one to make the complaint because she had an issue with the way it looked. She did not say anything about position, color or anything.

Mr. Molitor suggested a five minute recess so that the Petitioner could look at the letter.

Mr. Dierckman moved to recess for five minutes. The motion was seconded by Mrs. Torres and
APPROVED 4-0.

Five minute recess.

Rebuttal:

Mr. Scherb addressed the issues in the Heisel letter. He had not realized he needed a building permit since it was a moveable building. It sets in line with other sheds in the neighborhood. His shed is a couple of feet off the property line. It is relatively close to the Heisel house because of the property lines. He did not see that moving it seven feet would make that much difference. He felt the flooding she indicated was when they had four to five inches of rain. He had never been able to get grass to grow in the area and since the complaint and stop work order, he had not been able to finish his landscaping and mulching. The water actually runs to the east between the houses. They are not close friends with the Heisel's. There had been other incidents when the Heisel's complained. The kids only played in the shed when he first built it while it was empty. It now has a lock on it.

Mrs. Scherb stated there was not really any other place for the shed because of trees. If they move it in seven feet, it will take up a lot of their back yard. They are a corner lot and the side yard is a very narrow strip on the opposite side from their garage so would not be an ideal place for the storage shed. They did not want to cause a rift. Although there has not been any malice between them as neighbors, the Heisel's have been picky.

Mrs. Conn gave the Department Report. If Mr. Scherb could give the Department the addresses of the other sheds that are in line with his, the Code Enforcement Officer could verify the distance from the property line. The shed is moveable and could be moved if necessary. If the variance is granted, the Petitioner will still need to apply for consent to encroach agreement from the City Engineer's office. The Department recommended positive consideration.

Mr. Dierckman asked about the location of the Heisel property and location of the Scherb shed.

Mr. Scherb stated they are beside each other, both facing north. The shed is two feet off the property line. According to the Ordinance it should be six feet for the easement, plus three feet.

Mrs. Conn stated that the Urban Forester does not recommend plantings in the easement. She did not have proof that the easement was not in use.

Mr. Scherb stated that the last time the cable company did work it was on the Heisel property.

Mr. Molitor stated that easements are created by private agreement in the deed or subdivision plat. The Ordinance does not regulate the easement. It is not recommended to plant trees in the easement because they would interfere with drainage.

Mr. Scherb stated there was no drainage in the easement and his papers said utility easement.

Mrs. Torres asked if it was a drainage or utility easement.

Mr. Molitor stated that most say drainage and utility easement. It was probably created for Carmel Utilities for water and sewer, but apparently they were not using it.

Mr. Scherb stated there was nothing in the six feet easement on his property. There were only power, phone and cable back there. The gas is serviced from Armon Drive. His public water and sewer do not run back there.

Mr. Hawkins asked about the distance from the shed to the Heisel's home. From the pictures it looked very close.

Mr. Scherb estimated that it was 30 feet. Their house is similar to his house and his setback is 30 feet. It may be as much as 40 to 50 feet.

Mr. Dierckman asked if Mr. Scherb would need approval from another department.

Mrs. Conn stated that he would need to apply for Consent to Encroach through the City Engineer's office.

Mr. Dierckman suggested it be moved out of the easement area and be sheltered with plantings.

Mr. Scherb stated there was a tulip tree off the back corner of the shed and another tree already planted in the easement about six feet away. Both would provide some cover. He would be willing to plant bushes or add a trellis, if he could leave the shed where it is currently located. He would paint it to match the house.

Discussion followed about what might grow there and whether to move the shed out of the easement.

Mr. Scherb showed a picture of the shed located on the Heisel property. He cannot shift his shed into alignment with theirs because of the tulip tree.

Mr. Dierckman moved to approve **Docket No. 04120009 V, Woodland Green, Sec 1, lot 77: Scherb Residence**, with the **Commitment** that the Petitioner will get Department approval for the landscaping plan behind the shed. The motion was seconded by Mrs. Torres and **APPROVED 4-0**.

I. Old Business.

There was no Old Business.

J. New Business.

1j. Proposed amendments to Article IX (BZA Rules of Procedure), Section 30.08: Alternate Procedure (Hearing Officer), and Chapter 21: Special Uses.

Mr. Molitor led the discussion of the three sets of amendments to the BZA Rules of Procedure. The first was Alternate Procedure. Changes have been made to the Zoning Ordinance on recommendation of the Plan Commission and passed by the City Council. The City Council has already authorized the BZA to use a Hearing Officer to hear Special Uses and Special Exceptions. Companion amendments to Article IX of BZA Rules of Procedure will put the existing rule for Hearing Officer in conformance with the Zoning Ordinance. The purpose is to save time for the full Board to hear the larger issues. If something comes up for the Hearing Officer that one of the Board members feels should be heard by the full Board, any Board member can recommend it. The Petitioner has 14 days to appeal the decision of the Hearing Officer to the full Board. The second set dealt with changes made by the City Council that grew out of the case with Martin Marietta. The Petition had been denied and they submitted a

similar petition they wanted the Board to hear before the litigation was resolved. Martin Marietta also sued the Board on that point. The Court overturned the Staff's decision not to put the petition on the agenda, because the Ordinance did not read that way. The Ordinance has been changed by the City Council, so the BZA Rules do not need to be amended on that point. The third set is proposed amendment to Article VI of the BZA Rules of Procedure. There was nothing in the Rules of Procedure on how to handle an Appeal to the Director's decision. This would allow for a pre-hearing conference for all interested parties to meet and discuss the issues.

Mr. Dierckman moved to accept the Rules Amendments as presented. The motion was seconded by Mrs. Torres and **APPROVED 3-0**. Mr. Broach abstained because he had not had a chance to read the material.

K. Adjourn.

Mr. Dierckman moved to adjourn. The motion was seconded by Mrs. Torres and **APPROVED 4-0**. The meeting was adjourned at 8:30 PM.

Executive Session followed the meeting to discuss pending litigation.

James R. Hawkins, President

Connie Tingley, Secretary